

Maribor, 20-21 March 2014

Evidence – some general issues

Session A

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Topics to be discussed

- Methods of proof
 - 'Free evaluation of evidence' in a cross-border perspective
 - Meaning of 'material truth' in national law of evidence
- Means of proof
 - Listing of means of proof in various national laws
 - Means of proof: admissibility, weight and and relevance
- Prima facie evidence
 - Standards of proof (certainty/probability) and their meaning
- Eventuality
 - Preclusions in the course of proceedings and the need to assert facts and produce evidence that is conditionally relevant

Methods of proof

- Modern and traditional approach to methods of proof?
 - Historical discussion: 'Free' and 'legal' evaluation of evidence
 - Current relevance of the 'free' assessment of evidence
 - Dispositive nature? Variable by agreement?
- 'Material truth' revisited
 - 'Material truth' in the context of *intime conviction*
 - 'Material truth' in an ideological key
 - A modern approach to the notion of 'material truth'?
 - Redefine or abandon?

Means of proof

- Uniform understanding or parochialism?
- The catalogue of means of proof
 - Universally accepted:
 - Documents
 - Witnesses
 - Experts
 - Inspection
 - (Party testimony)
 - Other? (Oath, presumptions, written declarations, confession)
- Relevance of different categorizations
 - Weight: Party v. witness testimony?
 - Admissibility:
 - What means are excluded for proof of certain facts?
 - Hearsay? Party testimony?
 - What means should be the only proof of certain facts?
 - Documents?

Prima facie evidence

- Standards of proof
 - Single, double, triple
 - Civil and criminal standards: common and civil law divide
 - Quantification or moral/intuitive assessment
 - Certainty, probability and mathematical proof
- Best evidence rule?

Eventuality

- Concept of 'eventuality'
 - German or universal?
- Eventuality and preclusions in submitting evidence
 - Recent reforms and their purpose
 - Cut-off date(s): when and why? Absolute or relative?
 - Achieving concentration and procedural discipline?
 - Effectiveness – yes or no?
- Eventuality and access to justice
 - Level of formalities
 - Costs of proceedings